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| 10/731,937      | 12/10/2003  | Peter Maurits Maria Van Geert | CM1976C             | 6673             |

27752 7590 06/30/2004

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| EXAMINER |
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MAYES, MELVIN C

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| ART UNIT | PAPER NUMBER |
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1734

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/731,937

Applicant(s)

VAN GEERT ET AL.

Examiner

Melvin Curtis Mayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/857,958.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/10/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

(1)

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-8, drawn to a process of making a holographic structure.

Group II, claim(s) 9, drawn to a package.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the shared special technical feature, using a water solvent based primer with an organic solvent based printing ink, which is shown by Catena et al. 5,658,968 (col. 1, line 10 – col. 2, line 61), does not define a contribution over the prior art.

(2)

During a telephone conversation with Thibault Fayette on June 22, 2004, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-8.

Affirmation of this election must be made by applicant in replying to this Office action. Claim 9 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

(3)

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 112***

(4)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

(5)

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 claims “producing a pattern on an...**embossed** layer...” Does this mean that the layer onto which a pattern is produced is already embossed? According to the specification, the pattern produces the embossement of the layer. Claims 1, 2 and 6 would be clearer if Claim 1 was amended to read “producing a pattern on an organic solvent based embossable layer to form an embossed layer exhibiting a holographic effect” and Claims 2 and 6 amended to read “embossable layer” or similar language to make it clear that the layer is embossed by the pattern.

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Claim 1 claims applying a metallic layer onto "said embossed layer." Is this "embossed layer" the layer before or after the pattern is produced on it? This would be clear if the claim were amended to make a distinction between the layer to be embossed and the embossed layer.

***Claim Rejections - 35 USC § 103***

(6)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

(7)

Claims 1-5, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Catena et al. 5,658,968.

The admitted prior discloses that a typical holographic film structure for packaging comprises an organic solvent based lacquer applied to a polyester film, the lacquer embossed, a metallic layer, typically aluminum, applied to the embossed lacquer, the polyester film laminated to other films and the structure printed (pg. 1-2). The admitted prior art does not disclose printing the metallic layer by first applying a water based primer then an organic solvent based ink.

Catena et al. teach that solvent-borne flexible packaging printing inks are widely used to print a wide variety of substrates such as plastic films and aluminum foils. Catena et al. teach that blocking is a problem which typically occurs when printing on on-absorbent substrates such as flexible packaging and teaches that water-borne primers and adhesives are used, which printers and packagers prefer. Catena et al. teach using a solvent-borne printing ink with increased water-borne primer compatibility and teach that solvents for the printing ink can be selected from alkanols such as ethanol, acetates such as ethyl acetate or mixtures thereof (col. 1, lines 10-50, col. 2, lines 57-61, col. 3, lines 24-31).

It would have been obvious to one of ordinary skill in the art to have modified the method of the admitted prior art for making packaging material with holographic film structure by applying a water-borne primer to the aluminum metallic layer before printing, as taught by Catena et al., as primer preferred by printers and packagers to prevent blocking which typically

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occurs when printing on on-absorbent substrates such as flexible packaging. The use of a water based primer such as acrylic would have been obvious to one of ordinary skill in the art to prevent blocking which can occur when printing on packaging substrates such as aluminum.

It would have been obvious to one of ordinary skill in the art to have further modified the method of the admitted prior art by printing on the water based primer using an ink that is solvent borne, as taught by Catena et al, as widely used to print on a wide variety of packaging substrates. Printing on a water based primer by a solvent based ink would have been obvious to one ordinary skill in the art, as Catena et al. teach that solvent based printing inks are widely used and teach that such inks are improved in water based primer compatibility for printing on water based primers, such primers being preferred by printers and packagers.

It would have been obvious to one of ordinary skill in the art to have further modified the method of the admitted prior art by providing the white and colored solvent based inks for printing as each comprising ethanol and ethyl acetate, as Catena et al. teach that solvent for printing ink can be a mixture of an alkanol such as ethanol and an acetate such as ethyl acetate.

(8)

Claims 1, 2 and 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 93/08084 in view of Catena et al. 5,658,968.

WO 93/08084 discloses a method of making packaging material with holographic pattern comprising: applying an acrylic solvent –based layer to a polypropylene film substrate; embossing the acrylic layer, providing the embossed layer with an aluminum film; and printing the aluminum film. WO 93/08084 further discloses that the substrate may be laminated to transparent polypropylene layer (pg. 3, line 18 – pg. 4, line 23). WO 93/08084 does not disclose

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printing the aluminum film by first applying a water based primer then an organic solvent based ink.

Catena et al. teach that solvent-borne flexible packaging printing inks are widely used to print a wide variety of substrates such as plastic films and aluminum foils. Catena et al. teach that blocking is a problem which typically occurs when printing on on-absorbent substrates such as flexible packaging and teaches that water-borne primers and adhesives are used, which printers and packagers prefer. Catena et al. teach using a solvent-borne printing ink with increased water-borne primer compatibility and teach that solvents for the printing ink can be selected from alkanols such as ethanol, acetates such as ethyl acetate or mixtures thereof (col. 1, lines 10-50, col. 2, lines 57-61, col. 3, lines 24-31).

It would have been obvious to one of ordinary skill in the art to have modified the method of WO '084 for making packaging material with holographic pattern by applying a water-borne primer to the aluminum film before printing, as taught by Catena et al., as primer preferred by printers and packagers to prevent blocking which typically occurs when printing on on-absorbent substrates such as flexible packaging. The use of a water based primer such as acrylic would have been obvious to one of ordinary skill in the art to prevent blocking which can occur when printing on packaging substrates such as aluminum.

It would have been obvious to one of ordinary skill in the art to have further modified the method of WO '084 by printing on the water based primer using an ink that is solvent borne, as taught by Catena et al, as widely used to print on a wide variety of packaging substrates. Printing on a water based primer by a solvent based ink would have been obvious to one ordinary skill in the art, as Catena et al. teach that solvent based printing inks are widely used and teach that such



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inks are improved in water based primer compatibility for printing on water based primers, such primers being preferred by printers and packagers.

It would have been obvious to one of ordinary skill in the art to have further modified the method of WO '084 by providing the white and colored solvent based inks for printing as each comprising ethanol and ethyl acetate, as Catena et al. teach that solvent for printing ink can be a mixture of an alkanol such as ethanol and an acetate such as ethyl acetate.

### ***Conclusion***

(9)

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


(10)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234. The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Melvin Curtis Mayes  
Primary Examiner  
Art Unit 1734

MCM  
June 25, 2004